

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

EUGENE POWELL GRIFFIN

*v.*

UNITED STATES OF AMERICA

Criminal Action No.  
1:88-CR-045-WSD

Civil Action No.  
1:16-CV-1622-WSD

**ORDER**

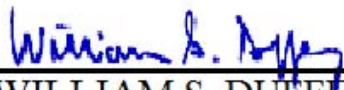
This matter is before the Court for consideration of Defendant's motion to vacate his sentence under 28 U.S.C. § 2255, and motion for leave to amend. Regarding the motion for leave to amend, this Court does not have jurisdiction to hear the claim Defendant wishes to bring because neither exception to 28 U.S.C. § 2255(h)'s prohibition against second or successive § 2255 motions exists here. That motion is denied.

Regarding Defendant's motion to vacate his sentence under 28 U.S.C. § 2255, Defendant concedes that his motion is ripe for resolution and due to be denied because the Eleventh Circuit has decided, contrary to the arguments presented in his § 2255 motion, that Georgia burglary may remain a predicate crime for purposes of the Armed Career Criminal Act, 18 U.S.C. § 924(e). *United States v. Gundy*, 842 F.3d 1156 (11th Cir. 2016), *cert. denied*, 2017 WL 1301351 (October 2, 2017), and *United States v. Heard*, 677 F. App'x 636 (11th Cir. 2017), *cert. denied*, 137 S. Ct. 2109 (May 1, 2017). The Court agrees. *Gundy* and *Heard* hold that the Georgia burglary statute is divisible and includes the elements of generic

burglary. *Gundy*, 842 F.3d at 1164-68; *Heard*, 677 F. App'x at 636. Thus, Defendant's motion to vacate his sentence is denied.

Because Defendant's motion is foreclosed by binding Eleventh Circuit precedent, the Court finds that Defendant has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As such, the Court declines to issue a Certificate of Appealability. *Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015) (holding that "no COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law." (internal quotation marks omitted))

**SO ORDERED** this 27th day of November, 2017.

  
\_\_\_\_\_  
WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE

Prepared by  
J. Elizabeth McBath, Assistant United States Attorney  
(404) 581-6000